

ESTTA Tracking number: **ESTTA237809**

Filing date: **09/19/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Phat Fashions LLC
Granted to Date of previous extension	09/21/2008
Address	512 Seventh Avenue, 43rd Floor New York, NY 10018 UNITED STATES

Attorney information	Brad D. Rose Pryor Cashman LLP 410 Park Ave., 10th Floor New York, NY 10022 UNITED STATES pzylberg@pryorcashman.com
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### Applicant Information

Application No	77092406	Publication date	03/25/2008
Opposition Filing Date	09/19/2008	Opposition Period Ends	09/21/2008
Applicant	Phat Panda, LLC 3702 South Virginia Street, Ste. G12-401 Reno, CA 89502 UNITED STATES		

### Goods/Services Affected by Opposition

Class 025. First Use: 2007/01/09 First Use In Commerce: 2007/01/09  
All goods and services in the class are opposed, namely: Clothing, namely, t-shirts, hooded shirts, baseball jerseys, sweatshirts, caps and hats, beanies, shirts and jackets

### Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2240881	Application Date	07/17/1998
Registration Date	04/20/1999	Foreign Priority Date	NONE
Word Mark	BABY PHAT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1993/12/00 First Use In Commerce: 1993/12/00 Clothing for women and girls, namely, pants, denim jeans, overalls, shorts, shirt, blouses, skirts, dresses, sweater, jackets in all fabrications and weights, vest, T-shirts, sweatshirt, sweatpants, swimwear, caps, headbands, hats, belts, underwear, socks, sleepwear, and scarves; outerwear in all fabrication, namely, cloth, denim, leather and suede jackets; rainwear

U.S. Registration No.	3004138	Application Date	07/02/2004
Registration Date	10/04/2005	Foreign Priority Date	NONE
Word Mark	BABY PHAT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2004/07/01 First Use In Commerce: 2004/07/01 FOOTWEAR		

U.S. Application No.	76595426	Application Date	06/01/2004
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BABY PHAT BABY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: Infant, toddler and children's clothing, namely, jerseys, athletic uniforms, pants, cycle pants, trousers, slacks, jeans, denim jeans, overalls, coveralls, jumpers, jump suits, shorts, boxer shorts, shirts, T-shirts, under shirts, night shirts, rugby shirts, polo shirts, tops, crop tops, tank tops, halter tops, sweat shirts, sweat shorts, sweat pants, warm-up suits, jogging suits, blouses, skirts, dresses, sweaters, cardigans, vests, fleece vests, pullovers, fleece pullovers, snow suits, parkas, anoraks, ponchos, jackets, sports jackets, golf and ski jackets, reversible jackets, coats, blazers, suits, turtlenecks, swimwear, beachwear, namely, swimwear, sandals and swim cover-ups, caps, berets, hats, headbands, wrist bands, headwear, ear muffs, scarves, bandanas, belts, suspenders, neckwear, neckties, ties, bow ties, cloth bibs, cloth diapers, booties, infantwear, baby buntings, underwear, briefs, swim and bathing trunks, singlets, socks, loungewear, robes, bathrobes, pajamas, sleepwear, night gowns, hosiery, knit hosiery, leg warmers, bodysuits, leggings, tights, leotards, unitards, gloves, mittens, footwear, shoes, sneakers, boots, galoshes, sandals, zori, slippers and rainwear		

U.S. Registration No.	2557269	Application Date	08/12/2000
Registration Date	04/02/2002	Foreign Priority Date	NONE
Word Mark	BABY PHAT GIRLZ		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2001/09/15 First Use In Commerce: 2001/09/15 Clothing, namely, pants, denim jeans, overalls, shorts, shirts, blouses, skirts, dresses, sweaters, jackets in all fabrications and weights, vests, t-shirts, sweatshirts, sweatpants, swimwear, caps, headbands, hats, belts, underwear, socks, sleepwear and scarves; outerwear in all fabrications, namely, cloth, denim, leather and suede jackets; footwear; rainwear

U.S. Registration No.	3149054	Application Date	11/08/2001
Registration Date	09/26/2006	Foreign Priority Date	NONE
Word Mark	BABY PHAT GIRLZ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2000/03/00 First Use In Commerce: 2000/03/00 Clothing, namely, swimwear, caps, headbands, belts, underwear, socks, sleepwear, and scarves; rainwear		

U.S. Application No.	78596251	Application Date	03/28/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BABY PHAT GODDESS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: Clothing, namely, shirts, T-shirts, under shirts, night shirts, rugby shirts, polo shirts, cardigans, jerseys, uniforms, pants, trousers, slacks, jeans, culottes, cargo pants, denim jeans, overalls, coveralls, jumpers, jump suits, shorts, boxer shorts, tops, crop tops, tank tops, halter tops, sweat shirts, sweat shorts, sweat pants, wraps, warm-up suits, jogging suits, track suits, play suits, blouses, skirts, dresses, gowns, sweaters, vests, fleece vests, pullovers, snow suits, parkas, capes, anoraks, ponchos, jackets, reversible jackets, coats, blazers, suits, turtlenecks, cloth ski bibs, swimwear, beachwear, tennis wear, surf wear, ski wear, layettes, infantwear, infants sleepers, booties, baby bibs not of paper, cloth diapers, caps, swim caps, berets, beanies, hats, visors, headbands, wrist bands, sweat bands, headwear, ear muffs, aprons, scarves, bandanas, belts, suspenders, neckwear, ties, neckerchiefs, ascots, underwear, thermal underwear, long underwear, briefs, swim and bathing trunks, bras, sports bras, brassieres, bustiers, corsets, panties, thongs, garters and garter belts, teddies, girdles, foundation garments, singlets, socks, loungewear, robes, smocks, underclothes, pajamas, sleepwear, night gowns, lingerie, camisoles, negligees, chemises, chemisettes, slips, sarongs, leg warmers, hosiery, pantyhose, body stockings, knee highs, leggings, tights, leotards, body suits, unitards, body shapers, gloves, mittens, footwear, shoes, sneakers, boots, galoshes, sandals, flip-flops, slippers and rainwear		

U.S. Application No.	78596474	Application Date	03/28/2005
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	BABY PHAT GODDESS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 025. First use:</p> <p>Clothing, namely, shirts, T-shirts, under shirts, night shirts, rugby shirts, polo shirts, cardigans, jerseys, uniforms, pants, trousers, slacks, jeans, culottes, cargo pants, denim jeans, overalls, coveralls, jumpers, jump suits, shorts, boxer shorts, tops, crop tops, tank tops, halter tops, sweat shirts, sweat shorts, sweat pants, wraps, warm-up suits, jogging suits, track suits, play suits, blouses, skirts, dresses, gowns, sweaters, vests, fleece vests, pullovers, snow suits, parkas, capes, anoraks, ponchos, jackets, reversible jackets, coats, blazers, suits, turtlenecks, cloth ski bibs, swimwear, beachwear, tennis wear, surf wear, ski wear, layettes, infantwear, infants sleepers, booties, baby bibs not of paper, cloth diapers, caps, swim caps, berets, beanies, hats, visors, headbands, wrist bands, sweat bands, headwear, ear muffs, aprons, scarves, bandanas, belts, suspenders, neckwear, ties, neckerchiefs, ascots, underwear, thermal underwear, long underwear, briefs, swim and bathing trunks, bras, sports bras, brassieres, bustiers, corsets, panties, thongs, garters and garter belts, teddies, girdles, foundation garments, singlets, socks, loungewear, robes, smocks, underclothes, pajamas, sleepwear, night gowns, lingerie, camisoles, negligees, chemises, chemisettes, slips, sarongs, leg warmers, hosiery, pantyhose, body stockings, knee highs, leggings, tights, leotards, body suits, unitards, body shapers, gloves, mittens, footwear, shoes, sneakers, boots, galoshes, sandals, flip-flops, slippers and rainwear</p>		

U.S. Registration No.	2303780	Application Date	07/17/1998
Registration Date	12/28/1999	Foreign Priority Date	NONE
Word Mark	BABY PHAT		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 025. First use: First Use: 1993/12/00 First Use In Commerce: 1993/12/00</p> <p>Clothing for women and girls, namely, pants, denim jeans, overalls, shorts, shirts, blouses, skirts, dresses, sweaters, jackets in all fabrications and weights, vests, T-shirts, sweatshirts, sweatpants, swimwear, caps, headbands, hats, belts, underwear, socks, sleepwear, and scarves; outerwear in all fabrications, namely, cloth, denim, leather and suede jackets; rainwear</p>		

U.S. Registration No.	3000181	Application Date	07/06/2004
Registration Date	09/27/2005	Foreign Priority Date	NONE
Word Mark	BABY PHAT		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 025. First use: First Use: 2004/07/01 First Use In Commerce: 2004/07/01</p> <p>Footwear</p>		

U.S. Registration No.	2429559	Application Date	10/13/1999
Registration Date	02/20/2001	Foreign Priority Date	NONE
Word Mark	BABY PHAT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1995/12/31 First Use In Commerce: 1995/12/31 CLOTHING FOR WOMEN AND GIRLS, NAMELY, PANTS, DENIM JEANS, OVERALLS, SHORTS, SHIRT, BLOUSES, SKIRTS, DRESSES, SWEATER, JACKETS IN ALL FABRICATIONS AND WEIGHTS, VEST, T-SHIRTS, SWEATSHIRT, SWEATPANTS, SWIMWEAR, CAPS, HEADBANDS, HATS, BELTS, UNDERWEAR, SOCKS, SLEEPWEAR, AND SCARVES; OUTERWEAR IN ALL FABRICATION, NAMELY, CLOTH, DENIM, LEATHER AND SUEDE JACKETS; RAINWEAR		

U.S. Registration No.	3000182	Application Date	07/06/2004
Registration Date	09/27/2005	Foreign Priority Date	NONE
Word Mark	BABY PHAT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2004/07/01 First Use In Commerce: 2004/07/01 Footwear		

U.S. Registration No.	1809325	Application Date	04/08/1993
Registration Date	12/07/1993	Foreign Priority Date	NONE
Word Mark	PHAT FARM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1993/03/30 First Use In Commerce: 1993/03/30 clothing; namely, denim jeans, denim jackets, shirts; namely, sweatshirts, T-shirts, and dress shirts, sweatshorts, army jackets		

U.S. Registration No.	2415455	Application Date	08/13/1999
Registration Date	12/26/2000	Foreign Priority Date	NONE
Word Mark	PHAT FARM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 1994/12/31 First Use In Commerce: 1994/12/31 Backpacks, messenger bags, athletic bags, tote bags, umbrellas, wallets purses, coin purses, key cases, and credit card cases		

	Class 025. First use: First Use: 1993/03/30 First Use In Commerce: 1993/03/30 Clothing for men, women and children, namely, pants, overalls, shorts, blouses, skirts, dresses, sweaters, vests, sweatpants, swimwear, caps, headbands, hats, belts, underwear, socks, sleepwear, stockings, pantyhose, scarves, suspenders, neckties and footwear; cloth, leather and suede jackets; rainwear
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U.S. Application No.	77231519	Application Date	07/17/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PHAT CLASSICS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: Clothing, namely, shirts, T-shirts, under shirts, night shirts, rugby shirts, polo shirts, cardigans, jerseys, uniforms, scrubs not for medical purposes, smocks, dress shirts, pants, trousers, slacks, jeans, culottes, cargo pants, stretch pants, denim jeans, overalls, coveralls, jumpers, jump suits, shorts, boxer shorts, tops, stretch tops, tube tops, crop tops, tank tops, tankinis, halter tops, sweat shirts, hooded sweat shirts, sweat shorts, sweat pants, wraps, warm-up suits, jogging suits, track suits, play suits, blouses, skirts, dresses, gowns, sweaters, vests, fleece vests, pullovers, snow suits, parkas, capes, anoraks, ponchos, cloaks, shrugs, jackets, dinner jackets, reversible jackets, wind-resistant jackets, shell jackets, sports jackets, golf and ski jackets, jean jackets, coats, heavy coats, over coats, top coats, petticoats, blazers, suits, tuxedos, turtlenecks, cloth ski bibs, swimwear, beachwear, tennis wear, surf wear, ski wear, layettes, infantwear, infants sleepers, booties, baby bibs not of paper, cloth diapers, caps, swim caps, berets, beanies, hats, visors, headbands, wrist bands, sweat bands, headwear, ear muffs, aprons, scarves, bandanas, belts, suspenders, neckwear, ties, neckerchiefs, ascots, underwear, thermal underwear, long underwear, briefs, swim and bathing trunks, bras, sports bras, brassieres, bustiers, corsets, panties, thongs, G-strings, garters and garter belts, teddies, girdles, foundation garments, singlets, socks, loungewear, robes, smocks, underclothes, pajamas, sleepwear, night gowns, nighties, lingerie, camisoles, negligees, chemises, chemisettes, slips, sarongs, leg warmers, hosiery, pantyhose, body stockings, knee highs, leggings, tights, leotards, body suits, unitards, body shapers, gloves, mittens, rain slickers, rainwear, footwear, shoes, mules, sneakers, boots, galoshes, sandals, flip-flops, and slippers		

U.S. Registration No.	1819997	Application Date	04/08/1993
Registration Date	02/08/1994	Foreign Priority Date	NONE
Word Mark	PHAT THREADS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1993/03/30 First Use In Commerce: 1993/03/30 clothing; namely, shorts, sweatshirts, T-shirts, dress shirts, army jackets, anoraks (windbreakers) and leather jackets		

U.S. Registration No.	2552152	Application Date	09/28/2000
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Registration Date	03/26/2002	Foreign Priority Date	NONE
Word Mark	PHAT FARM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1997/09/01 First Use In Commerce: 1997/09/01 Clothing, namely, pants, denim jeans, overalls, shorts, shirts, sweaters, jackets in all fabrications and weights, vests, T-shirts, sweatshirts, sweatpants, suspenders, neckties, caps, hats, headbands, belts, underwear, sleepwear, and scarves; workout gear, namely, warm-up suits, sweat suits, sweat shorts, jogging suits, sweat bands, tank tops, crop tops, track pants, cycle pants, sports tops, sports shorts, [ unitards, leotards, ] tights, [ leggings, leg warmers, and sports bras; ] outerwear in all fabrications, namely, cloth, denim, leather and suede jackets; footwear, socks; rainwear		

U.S. Registration No.	2551715	Application Date	02/03/2000
Registration Date	03/26/2002	Foreign Priority Date	NONE
Word Mark	P PHAT FARM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1997/07/01 First Use In Commerce: 1997/07/01 Clothing for men, [ women ] and children, namely, pants, overalls, shorts, sweaters, vests, sweatpants, caps, headbands, scarves, hats, belts, socks, sleepwear, [ suspenders; ] cloth, leather and suede jackets; rainwear; and men's and boy's swimwear, underwear and neckties		

U.S. Registration No.	2487474	Application Date	09/22/2000
Registration Date	09/11/2001	Foreign Priority Date	NONE
Word Mark	PHAT FARM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1997/07/01 First Use In Commerce: 1997/07/01 Clothing, namely, shirts, both knit and woven, T-shirts and sweatshirts		

U.S. Registration No.	2272181	Application Date	07/17/1998
Registration Date	08/24/1999	Foreign Priority Date	NONE
Word Mark	PHAT FARM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1994/12/00 First Use In Commerce: 1994/12/00 Clothing for men, women and children, namely, pants, denim jeans, overalls,		

	shorts, shirts, blouses, skirts, dresses, sweaters, jackets in all fabrications and weights, vests, T-shirts, sweatshirts, sweatpants, swimwear, caps, headbands, hats, belts, underwear, socks, sleepwear, scarves, and outerwear in all fabrications, namely, cloth jackets, denim jackets, leather jackets and suede jackets; rainwear
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U.S. Registration No.	2485552	Application Date	03/23/1998
Registration Date	09/04/2001	Foreign Priority Date	NONE
Word Mark	PHAT P FARM		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 018. First use: First Use: 1998/03/01 First Use In Commerce: 1998/03/01 Backpacks, and messenger bags</p> <p>Class 025. First use: First Use: 1998/03/01 First Use In Commerce: 1998/03/01 Men's and women's apparel, namely, pants, shirts both knit and woven, sweaters, coordinated jackets in all fabrications and weights, vests, T-shirts, sweatshirts, sweatpants, caps, hats, belts, and underwear; outerwear in all fabrications, namely, cloth jackets, denim jackets, leather jackets and suede jackets</p>		

U.S. Registration No.	3184177	Application Date	09/23/2002
Registration Date	12/12/2006	Foreign Priority Date	NONE
Word Mark	PHAT FARM P		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2003/07/00 First Use In Commerce: 2003/07/00 slacks, jackets, dinner jackets, sports jackets, coats, blazers and suits		

U.S. Application No.	77479951	Application Date	05/21/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PHAT PREMIUM		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 025. First use:</p> <p>Clothing, namely, shirts, T-shirts, under shirts, night shirts, rugby shirts, polo shirts, cardigans, jerseys, scrubs not for medical purposes, smocks, dress shirts, pants, trousers, slacks, jeans, culottes, cargo pants, stretch pants, denim jeans, overalls, shorts, boxer shorts, tops, stretch tops, tank tops, sweat shirts, hooded sweat shirts, sweat shorts, sweat pants, wraps, warm-up suits, jogging suits, track suits, sweaters, vests, fleece vests, pullovers, snow suits, parkas, capes, anoraks, jackets, reversible jackets, wind-resistant jackets, shell jackets, sports jackets, golf and ski jackets, jean jackets, coats, heavy coats, over coats, top coats, blazers, suits, tuxedos, turtlenecks, cloth ski bibs, swimwear, beachwear,</p>		



	tennis wear, surf wear, ski wear, caps, swim caps, berets, beanies, hats, visors, headbands, wrist bands, sweat bands, headwear, ear muffs, aprons, scarves, bandanas, belts, suspenders, neckwear, ties, neckerchiefs, ascots, underwear, thermal underwear, long underwear, briefs, swim and bathing trunks, singlets, socks, loungewear, robes, underclothes, pajamas, sleepwear, gloves, mittens, rain slickers, rainwear, footwear, shoes, sneakers, boots, galoshes, sandals, flip-flops, slippers, layettes, infantwear, infants sleepers, booties, baby bibs not of paper, cloth diapers
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U.S. Registration No.	2372748	Application Date	08/13/1999
Registration Date	08/01/2000	Foreign Priority Date	NONE
Word Mark	PHAT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1992/12/31 First Use In Commerce: 1992/12/31 Clothing for men, women and children, namely, pants, denim jeans, overalls, shorts, shirts, T-shirts, sweatshirts, blouses, skirts, dresses, sweaters, vests, sweatpants, sweatshorts, swimwear, caps, headbands, hats, belts, underwear, socks, sleepwear, stockings, pantyhose, scarves, suspenders, neckties and footwear; cloth, denim, leather and suede jackets; rainwear		

Attachments	78445330#TMSN.jpeg ( 1 page )( bytes ) 76595426#TMSN.gif ( 1 page )( bytes ) 76108580#TMSN.gif ( 1 page )( bytes ) 76335779#TMSN.gif ( 1 page )( bytes ) 78596251#TMSN.jpeg ( 1 page )( bytes ) 78596474#TMSN.jpeg ( 1 page )( bytes ) 75520586#TMSN.gif ( 1 page )( bytes ) 76601075#TMSN.gif ( 1 page )( bytes ) 75822584#TMSN.gif ( 1 page )( bytes ) 76601076#TMSN.gif ( 1 page )( bytes ) 75776084#TMSN.gif ( 1 page )( bytes ) 77231519#TMSN.jpeg ( 1 page )( bytes ) 76139482#TMSN.gif ( 1 page )( bytes ) 75909658#TMSN.gif ( 1 page )( bytes ) 76133867#TMSN.gif ( 1 page )( bytes ) 75520581#TMSN.gif ( 1 page )( bytes ) 75454820#TMSN.gif ( 1 page )( bytes ) 76454926#TMSN.gif ( 1 page )( bytes ) 77479951#TMSN.jpeg ( 1 page )( bytes ) 75776085#TMSN.gif ( 1 page )( bytes ) Phat_Panda_Opp.pdf ( 9 pages )(192517 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Brad D. Rose/
Name	Brad D. Rose

Date	09/19/2008
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application  
Serial No. 77/092,406  
for the mark  
**PHAT PANDA**

-----X	
PHAT FASHIONS LLC,	:
	:
Opposer,	:
	:
-against-	:
	:
PHAT PANDA, LLC	:
	:
Applicant.	:
-----X	

Opposition No.

In the matter of the Application of PHAT PANDA LLC (“Applicant” or “PP”) for registration of the trademark PHAT PANDA (Application Serial No. 77/092,406) which was published in the *Official Gazette* on March 25, 2008, Phat Fashions LLC (“Opposer” or “Phat Fashions”), a limited liability company organized under the laws of the State of New York with its principal place of business at 512 Seventh Avenue, 29<sup>th</sup> Floor, New York, New York 10018, respectfully avers that it will be substantially and irreparably damaged by the registration of the alleged mark PHAT PANDA (“Mark”) for “clothing, namely, t-shirts, hooded shirts, baseball jerseys, sweatshirts, caps and hats, beanies, shirts and jackets” in cl. 25 (“cl. 25 goods”), as shown in Application Serial No. 77/092,406 (“Application”). Accordingly, Phat Fashions hereby opposes the filing and registration of the mark PHAT PANDA. As grounds for opposition, it is alleged that:

**Phat Fashions:**





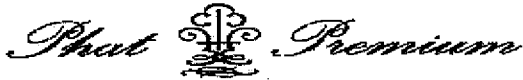
1. Opposer is and for over fifteen years has been an internationally renowned manufacturer and retailer of men's, women's and children's clothing, fashion accessories and cosmetics.

**Phat Fashions' Marks:**

2. In addition to the common law rights that Opposer owns in the mark "PHAT", Opposer is also the owner of the following federal trademark registrations and pending trademark applications, among others, hereinafter referred to as the "Family of PHAT Marks":

MARK	APPLICATION / REGISTRATION NO.	GOODS AND SERVICES
PHAT	2,372,748	25 (clothing)
BABY PHAT	2,240,881	25 (apparel and footwear)
BABY PHAT	3,004,138	25 (footwear)
BABY PHAT BABY	76/595,426	25 (children's clothing)
BABY PHAT GIRLZ	2,557,269	25 (clothing)
BABY PHAT GIRLZ	3,149,054	25 (clothing)
BABY PHAT GODDESS	78/596,251	25 (clothing and footwear)

	78/596,474	25 (clothing and footwear)
<i>baby phat</i>	2,303,780	25 (clothing for women and girls)
<i>baby phat</i>	3,000,181	25 (footwear)
	2,429,559	25 (clothing for women and girls)
	3,000,182	25 (footwear)
PHAT FARM	1,809,325	25 (clothing)
PHAT FARM	2,415,455	18 (back packs) 25 (clothing)
PHAT CLASSICS	77/231,519	25 (clothing)
PHAT THREADS	1,819,997	25 (clothing)
<i>Phat Farm</i>	2,552,152	25 (clothing)
	2,551,715	25 (clothing)

	2,487,474	25 (shirts)
	2,272,181	25 (clothing)
	2,485,552	18 (backpacks) 25 (clothing)
	3,184,177	25 (jackets and suits)
	77/479,951	25 (clothing)

3. Opposer has continuously and substantially used the mark PHAT® in interstate commerce since at least as early as December 31, 1992 in connection with clothing in cl. 25, PHAT FARM® in interstate commerce in cl. 35 since at least as early as June 1992 in connection with its retail stores services featuring its fashion accessories, and has continuously and substantially used the marks PHAT FARM® and BABY PHAT® in interstate commerce since at least as early as 1993 on clothing and fashion accessories.

4. Opposer's Family of PHAT Marks have been in valid and continuous use since the date of first use cited in each registration and have not been abandoned.

5. Opposer has expended substantial sums and significant resources over the years advertising and promoting its Family of PHAT Marks. The PHAT®, PHAT FARM® and BABY PHAT® products, as well as the PHAT FARM® retail stores, have received widespread media attention, including features in The New York Times, The New York Post, The New York

Daily News, People Magazine, Forbes, Harper's Bazaar, Elle Magazine, The New Yorker and other newspapers and nationally distributed magazines. Further, PHAT FARM® and BABY PHAT® products have been prominently worn by numerous sports personalities, popular recording artists and high-profile celebrities, including Russell Simmons, Kobe Bryant, Patrick Ewing, Madonna, Eve, Adam Sandler, Chris Rock, Queen Latifah, Kimora Lee Simmons, Alicia Keys, Pink, Britney Spears, Eminem and Mary J. Blige, to name a few.

6. Opposer's products, including its line of clothing, accessory products and cosmetics, are widely distributed throughout the United States, on the Internet via its web sites [www.phatfarm.com](http://www.phatfarm.com) and [www.babyphat.com](http://www.babyphat.com) and in numerous foreign countries including Canada, the United Kingdom, Ireland, Germany, France, Denmark, Sweden, Japan and several others, and Opposer is currently planning the further expansion of its PHAT FARM® and BABY PHAT® retail stores.

7. Opposer's merchandise offered under the Family of PHAT Marks have come to symbolize quality in the eyes of the consuming public as a result of Opposer's exacting standards, its vigorous promotion of the PHAT marks and the publicity generated for the Family of PHAT Marks by the celebrities who prominently wear and/or use Opposer's products and services. The Family of PHAT Marks has become well known to the general public and to the trade, and has become distinctively and exclusively associated with Opposer and, as such, identify and distinguish the source and origin of Opposer's goods and services.

8. As a result of the substantial amount of time and money Opposer has expended in advertising and promoting its merchandise and retail store services under the Family of PHAT Marks, Opposer has built up significant goodwill in the Family of PHAT Marks. Further, the Family of PHAT Marks has become famous to the trade and the consuming public from the use

of each such mark on clothing and fashion accessories including hats, footwear, t-shirts, pants, shirts, jeans, jackets, sweatshirts, bags, belts, umbrellas, wallets and toiletry cases, throughout the United States and in numerous foreign countries and from the widespread media and celebrity attention it has received over the past decade.

9. Opposer vigorously polices its Family of PHAT Marks and, as a result of its efforts, is the only lawful entity using a mark comprising of the term PHAT on or in connection with clothing.

**The Infringing Application:**

10. Applicant filed a *Use-Based* Application to register PHAT PANDA on January 26, 2007, and began using its mark in commerce on January 9, 2007, fifteen (15) years after Opposer began using in commerce its Family of PHAT Marks on or in connection with clothing and related fashion accessories.

11. Applicant's mark PHAT PANDA encompasses Opposer's federally registered trademark PHAT® and dominant portions of its federally registered trademarks PHAT FARM® and BABY PHAT®. Indeed, "PHAT" is the dominant portion of Applicant's mark.

12. The goods upon which Applicant seeks to register PHAT PANDA covers among others "clothing, namely, t-shirts, hooded shirts, baseball jerseys, sweatshirts, caps and hats, beanies, shirts and jackets" in cl. 25, which goods are identical and highly related to the goods offered by Opposer under its famous Family of PHAT Marks.

13. Because the Family of PHAT Marks as used on or in connection with the goods offered by Opposer are exclusively associated with Opposer, Applicant's registration and use of the mark PHAT PANDA in cl. 25 will inevitably cause confusion in the minds of the public, misleading the public to believe that Applicant's clothing products emanate from Opposer or that



Applicant is in some way associated with or connected to Opposer, when, in fact, no such relationship exists.

14. In addition, because the Family of PHAT Marks are famous, use and registration of PHAT PANDA by Applicant will unquestionably dilute Opposer's Family of PHAT Marks.

15. In sum, registration of Applicant's mark will likely cause considerable dilution, confusion, mistake and/or deception in view of the facts that:

- (i) Opposer's registered word marks have been in continuous use since at least as early as 1992;
- (ii) Opposer's Family of PHAT Marks is famous and distinctive;
- (iii) the goods in connection with which Applicant currently uses its mark (clothing) overlaps and suggests an association with the clothing products offered by Opposer under its Family of PHAT Marks;
- (iv) Applicant's Mark encompasses Opposer's PHAT® trademark and the dominant portion of its BABY PHAT® and PHAT FARM® trademarks;
- (vi) Applicant's Mark is deceptively and confusingly similar to Opposer's Family of PHAT Marks, and will dilute the same;

**WHEREFORE**, Opposer prays that the Application, Serial No. 77/092,406, be rejected and that the Mark therein sought for the goods therein specified in International Class 25 be denied and refused.

The fee of \$300.00 for opposition in cl. 25 has been paid electronically through ESTTA.

POWER OF ATTORNEY

Opposer hereby appoints Brad D. Rose, Teresa Lee, Nicole E. Kaplan, Philippe Zylberg and Muzamil A. Huq members of the Bar of the State of New York, whose address is Pryor Cashman LLP, 410 Park Avenue, New York, New York 10022, (212) 421-4100, as its duly authorized agents and attorneys in this matter to prosecute this Opposition, to transact all business in the Patent and Trademark Office and in the United States Courts in connection with the Opposition, to sign their names to all papers which may be hereinafter filed in connection therewith and to receive all communications relating to same.

Dated: September 19, 2008

Respectfully submitted,

By: 

Teresa Lee, Esq.

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410 Park Avenue  
New York, New York 10022  
(212) 421-4100

Attorneys for Opposer,  
Phat Fashions LLC

Certificate of Mailing by ESTTA

I, Moira Shine, hereby certify that the Notice of Opposition is being filed electronically via ESTTA to: Commissioner for Trademarks, ATT: Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, Virginia 22313-1451 on the date indicated below.

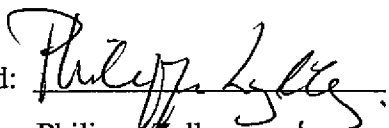
Date of Deposit: September 19, 2008

Signed: 

**Certificate of Service by FEDEX**

I hereby certify that a true and correct copy of NOTICE OF OPPOSITION is being served by "FEDEX" and addressed to Applicant, on September 19, 2008 at the address listed below:

Phat Panda, LLC  
3702 South Virginia Street, Ste. G12-401  
Reno, CA 89502

Signed:   
Name: Philippe Zylberg